

Contents

<i>Acknowledgements</i>	page viii
<i>Cases, Statutes, and Other Authorities</i>	x
<i>List of Abbreviations</i>	xvii

PART I INTRODUCTION AND PROBLEM

1	Introduction	3
	Overview	3
1.1	Context: Why Principles Matter	4
1.2	Objectives	10
1.3	The Scope of This Work	16
2	The Identity Crisis of International Criminal Law	20
	Overview	20
2.1	Context and Argument	20
2.2	Interpretive Assumptions	27
2.3	Substantive and Structural Conflation	39
2.4	Ideological Assumptions (Sovereignty and Progress)	45
2.5	After the Identity Crisis: The Deontic Turn	52
2.6	Implications	54

PART II PROPOSED SOLUTION: A HUMANIST, COHERENTIST, DEONTIC ACCOUNT

3	The Humanity of Criminal Justice	59
	Overview	59
3.1	Context and Argument	60
3.2	Why Engage with Constraints: A Human Commitment	65

3.3	Absorbing Common Criticisms: A Humanistic Account	74
3.4	Implications	84
4	Fundamentals without Foundations	85
	Overview	85
4.1	Terms: Fundamentals and Foundations	86
4.2	Where Can We Find Fundamental Principles?	86
4.3	Fundamentals without Foundations: Mid-level Principles and Coherentism	96
4.4	Justice: A Coherentist Conversation	113
5	Criminal Law Theory <i>in Extremis</i>	119
	Overview	119
5.1	New Challenges for Criminal Law Theory	119
5.2	Promising Problems	127
5.3	Conclusion	137
PART III ILLUSTRATION THROUGH APPLICATION		
6	An Unresolved Contradiction	143
	Overview	143
6.1	Argument and Resulting Insights	143
6.2	The Novel Reach of Command Responsibility	147
6.3	The Culpability Contradiction	149
6.4	The Stakes	155
6.5	First Strategy: Doctrinal Arguments to Sidestep the Contribution Requirement	159
6.6	Second Strategy: Characterization as a Separate Offence	163
6.7	Other Responses (and the Increasing Mystification of Command Responsibility)	169
6.8	Implications	173
7	The Outer Limits of Culpability	177
	Overview	177
7.1	What Are the Parameters of “Contribution”?	177
7.2	Culpability without Contribution?	185
7.3	Implications	190
8	The Genius of Command Responsibility	194
	Overview	194
8.1	Problem, Objective, and Themes	194
8.2	The Allergy to Negligence	199

8.3	A Proposed Justification of Command Responsibility	206
8.4	Implications	218
8.5	Conclusion	222
9	Horizons: The Future of the Justice Conversation	224
	Overview	224
9.1	Mid-level Principles and Coherentism at Work	224
9.2	Major and Minor Themes	229
9.3	Further Questions	231
<i>Annex 1</i>	<i>After the Identity Crisis: Responses and Clarifications</i>	237
<i>Annex 2</i>	<i>The Rise of Joint Criminal Enterprise: Lessons for Reasoning</i>	249
<i>Annex 3</i>	<i>Bemba: ICC Engagement with Deontic Analysis</i>	257
<i>Annex 4</i>	<i>The Pendulum Swing? Possible Questions from the Bemba Appeal Judgment</i>	272
	<i>Glossary of Selected Terms</i>	282
	<i>Bibliography</i>	284
	<i>Index</i>	303